

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ELWOOD H. JONES, JR.,

Petitioner,

-vs-

MARGARET BAGLEY, Warden,

Respondent.

:

Case No. 1:01-cv-564

:

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

:

ORDER REGARDING CUSTODY OF PENDANT

This capital habeas corpus case is before the Court upon advice from the Hamilton County Prosecutor's Office that Judge Ethna Cooper, the Hamilton County Common Pleas Judge to whom Petitioner's case (B-958578) is now assigned, has issued an Order and Entry Granting in Part Petitioner's Application for Post-Conviction DNA Testing. Paragraph 3 of that Order requires that "the pendant identified at trial as belonging to the victim (marked State's Exhibit 3 at trial)" along with other evidence be delivered by the Hamilton County Prosecutor's Office to Dr. Elizabeth Benzinger at the Ohio Bureau of Criminal Investigations for the requisite testing.

The pendant is presently in the custody of the Clerk of this Court. It was received by the Magistrate Judge at the time of the evidentiary hearing on September 25, 2007, and maintained by the Magistrate Judge in his office safe (Doc. No. 130). On April 1, 2011, the Magistrate Judge having given up the safe upon retirement, recall, and assignment to new chambers, delivered the pendant to the Clerk where it has been housed in the Clerk's evidence safe (Doc. No. 180).

This case is presently on appeal to the United States Court of Appeals for the Sixth Circuit (6th Cir. Case No. 10-3339). The Court of Appeals has not requested transmission of the evidence, nor is it likely to do so. This Court understands it continues to have authority to deal with the evidence pending the results of the appeal.

The Court further understands that the Hamilton County Prosecutor has determined to deliver the evidence to be tested by way of his investigator, Howard Hudson. Having conferred with both Ronald Springman, Hamilton County Assistant Prosecuting Attorney, and Karla M. Hall, counsel for Petitioner in the DNA testing proceedings, and neither of them having any objection to this procedure, IT IS HEREBY ORDERED:

1. Upon presentation of proper credentials, the Clerk shall deliver the pendant to Mr. Hudson by hand.
2. Mr. Hudson shall deliver the pendant to Dr. Benzinger as ordered by Judge Cooper.
3. When Dr. Benzinger has completed the ordered testing and returned the pendant to Mr. Hudson, it shall be thereafter maintained in the custody of the Hamilton County Prosecutor pending further order of this Court or the Sixth Circuit Court of Appeals.

February 20, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge

copy: The Honorable Ethna Cooper
Ronald Springman
Karla Hall (electronically, through the Court's ECF system)